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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,293	02/26/2004	Lena L. Heidel	HPA-21502/04	4932
25006	7590	12/02/2005		
			EXAMINER	
			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/787,293	HEIDEL, LENA L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jes F. Pascua	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 25 October 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 26-40 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15,16 and 18-25 is/are rejected.
- 7) Claim(s) 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 6/14/04, 11/28/05.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group IV, claims 15-25, in the reply filed on 10/25/2005 is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15, 18 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Warnke.

Warnke discloses a bag comprising a container of permeable material defining an interior chamber and a closure providing selective access into the container, wherein the permeable material comprises a mesh material having an outer layer and an inner layer, the inner layer having openings of a first size and the outer layer having openings of a second size, with the first size being greater than the second size. As a note, the mesh material of Warnke is inherently permeable to water.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warnke.

Warnke discloses the claimed invention, especially the container being constructed of a permeable mesh material. However, it is unclear if the mesh material of Warnke is knitted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to a knitted material for the mesh material of Warnke, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warnke.

Warnke discloses the claimed invention, especially the inner layer having openings. However, Warnke does not disclose the openings causing the inner layer to have an air permeability of greater than 825 cfm. It would have been an obvious matter of design choice to adjust the dimensions of the openings such that the inner layer of Warnke would have an air permeability of greater than 825 cfm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warnke.

Warnke discloses the claimed invention, especially the outer layer having openings. However, Warnke does not disclose the openings causing the outer layer to have an air permeability of greater than 800 cfm. It would have been an obvious matter of design choice to adjust the dimensions of the openings such that the outer layer of Warnke would have an air permeability of greater than 800 cfm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warnke.

Warnke discloses the claimed invention, especially the mesh material having openings. However, Warnke does not disclose the openings causing the mesh material to have an air permeability of greater than 750 cfm. It would have been an obvious matter of design choice to adjust the dimensions of the openings such that the mesh material of Warnke would have an air permeability of greater than 750 cfm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

9. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warnke.

Warnke discloses the claimed invention except for the closure being a zipper instead of a drawstring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the drawstring of Warnke with a zipper since the Examiner takes Official Notice of the equivalence of zippers and drawstrings for their use in the bag art and the selection of any of these known equivalents to provide selective access into the interior chamber of Warnke would be within the level of ordinary skill in the art.

Regarding claim 24, Warnke discloses the claimed invention except for the closure being a zippered flap instead of a drawstring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the drawstring of Warnke with a zippered flap since the Examiner takes Official Notice of the equivalence of zippered flaps and drawstrings for their use in the bag art and the selection of any of these known equivalents to provide selective access into the interior chamber of Warnke would be within the level of ordinary skill in the art.

#### ***Allowable Subject Matter***

10. Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP